

MINUTES

MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on February 4, 2005 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 218, 2/1/2005
Executive Action:

CHAIRMAN WHEAT opened the meeting.

HEARING ON SB 218

Opening Statement by Sponsor:

SEN. JON TESTER (D), SD 15, opened the hearing on **SB 218**, Revise seed contract law--liability for genetically engineered wheat.

SEN. TESTER informed the Committee that the bill was called a Farmer's Protection Act. The bill deals with liability in regard to genetically modified seed. He told the Committee that genetically modified wheat seed has not been introduced for commercial growing at this point. He provided background on the farming and ranching communities in Montana. He explained that it was critically necessary to ensure that family farms and ranches survive into the future. It was his opinion that as food production is consolidated into fewer hands options for the consuming public and competition in the marketplace decline. He asserted that there are basically three areas which farmers have control over: seed, labor and operational time. He hoped that this bill would allow farmers to maintain control over the seed supply. He noted that as agriculture moves forward there is a model which he thinks is harmful, the Tyson Model where; the company supplies the chicken, the feed and the market. He feels that there have been steps taken towards this model.

He stressed that the bill was about controlling genetically modified seed, not profitability or options. He opined that once a genetically modified seed is introduced into the environment the environment would take control. He asserted that SB 218 would place the liability where it deserves to be, the agribusiness. He stated that the heart of the bill was contained in Section 3. He requested that the Committee ask the opponents about the profitability in family farm agriculture in the last 50 years, what role federal subsidies play in the profitability of family farm agriculture, what role consolidation in the marketplace has had on family farm agriculture, and if they can see a correlation between the consolidation in the markets and the inputs with the consolidation in the seed industry. It was his understanding that Monsanto had just brought a seed company. He reserved the right to close.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 7.5}

Proponents' Testimony:

Dena Hoff, Farmer from Glendive and Representative of Northern Plains Resource Council, expressed the support of the Northern

Plains Resource Council for SB 218. She emphasized that wheat is important to Montana's way of life. She informed the Committee that Montana is the largest producer of organic wheat in the nation. She mentioned SJ Resolution 8 which stated that genetically modified wheat should not be introduced until Montana's market was ready. It also recognized that segregation systems were not adequate to keep genetically engineered wheat from contaminating nongenetically engineered wheat. She purported that SB 218 would protect farmers from the liabilities associated with genetically engineered crops resulting from contamination by making sure that the biotechnology companies are responsible for their products.

She felt that the problem with genetically engineered wheat as of now is that while farmers would not own the seed and would not be allowed to store the seed they would still be liable for damages to neighbors crops or the grain marketing system when contamination occurs. She mentioned a problem in the system where a farmer whose crops are damaged by cross contamination could be sued by a company, such as Monsanto, for infringement. She concluded by stating that SB 218 does not discriminate against farmers, whether they grow genetically engineered wheat or not. In the view of Northern Plains the manufacturers should not have a problem with the bill and should stand behind their product if there is no problem with the technology. If there is a problem with the technology it is absolutely unacceptable in Northern Plain's view to place the liability on Montana's farmers. She urged support of SB 218. She provided a written testimony and a pamphlet on a court case concerning Monsanto.

[EXHIBIT\(jus28a01\)](#)

[EXHIBIT\(jus28a02\)](#)

{Tape: 1; Side: A; Approx. Time Counter: 7.5 - 11.8}

Larry Johnson, Former President of the Montana Grain Growers Association and Farmer, claimed that 90-95% of the farmers in Montana would support this legislation. He felt that the Montana Grain Growers Association no longer supports the majority of farmers in Montana on the issue of genetically modified seeds. He is a member of Ag Wise Inc. which is a small business in Montana that does not confirm to the general market.

He informed the Committee that the parent companies for most of the chemical companies are pharmaceutical companies. He referred to the Starling Incident. He named three drugs which have been in the news within the last few years; Vioxx, Paxil and Phen Phen. He pointed out that all of these drugs had gone through the Food Drug Administration's process and had to be pulled. He

also pointed out that the companies which these drugs belonged to were responsible for the consequences. He felt that it should be the same with the corporations producing genetically modified seed. In his opinion he felt that SB 218 would place ruled on the use of genetically modified crops. He asserted that if the company owns the seed and collects money on it no matter where it is then they should have some responsibility for damages. In closing he discussed the court case in which he was involved.

{Tape: 1; Side: A; Approx. Time Counter: 11.8 - 25.1}

John Smillie, Western Organization of Resource Councils, spoke of three federal agencies which have a role in the introduction of genetically modified wheat: U.S. Department of Agriculture, Food and Drug Administration and Environmental Protection Agency. He discussed the role each of these agencies play in the process. He noted that none of these agencies assess the impact or the risk to the market or to Montana farmers. He informed the Committee that the assessment of the risk and the liability is up to the manufacturer. However, if the manufacturer fails to understand what the risks and liabilities are the liability falls on Montana farmers, not the manufacturer. He cited Dr. Robert Wisener who found that if genetically modified wheat is introduced into the market, before it is ready, most major customers overseas would not buy U.S. or Montana wheat. The result would be the loss of half or more of the market and a drop of a third of the price for hard red spring wheat. This would cause most of Montana's farmers to go out of business whether they grew genetically altered wheat or not. He felt that it was critical not to introduce genetically modified wheat into the system until it was ready.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 3.4}

Nick Venhuizen, a Farmer from Manhattan, discussed the work which farmers put into their fields. He asked for protection from the introduction of genetically modified grain.

{Tape: 1; Side: B; Approx. Time Counter: 3.4 - 4.8}

Dan Dutton, Farmer/Rancher from Belfry Montana, provided written testimony for the Committee. He addressed the impact of the drought on Montana's economy. He feels that the health of Montana's wheat production is essential and vital to Montana's economy. He pronounced that SB 218 addressed the legal concerns of wheat farmers allowing them to rise above the legal curve for litigation of genetically engineered wheat. He noted that SB 218 would not prevent the introduction of commercial genetically engineered wheat into Montana but would act as an incentive for

manufacturers to develop stewardship programs for their products. It also provides a strong incentive for farmers planting genetically engineered wheat to comply with all of the manufacturer, EPA and FDA requirements. He surmised that SB 218 would not guarantee that farmers legal liabilities are eliminated relating to genetically engineered wheat. He urged do pass for SB 218.

EXHIBIT(jus28a03)

{Tape: 1; Side: B; Approx. Time Counter: 4.8 - 9.1}

Bill Kim, Kim Seed Potatoes LLP, provided a history of Kim Seed Potatoes relationship with Monsanto and genetically modified potatoes. He remarked that when discussing genetically modified organisms one must know who did the research, who paid for the research and who gave the research results. He mentioned the implications of raising genetically modified potatoes for his farm. His concern was that genetically modified wheat is an unproven product and that even if one problem is fixed many others arise with genetically altered products. He mentioned many of the different ways which genetically modified wheat could enter into a field despite all of the efforts put forth by the farmers. In conclusion he informed the Committee that their profit margin was decreasing and he was concerned about the diversity of America's seed control.

{Tape: 1; Side: B; Approx. Time Counter: 9.1 - 14.5}

Dr. Scott A. Settle, Vice President of the Settle Ranch Company, was a biomedical research scientist. He explained that genetically engineered crops are patented, residing on the genetic information which is inserted into the plants. This piece of information works as a trademark and reproduction of the plant reproduced the trademark. Therefore, any plant that has this trademark falls under the legal sanctions of the patent. He informed the Committee that a farmer who grows patented crops pays the patent holder a technology user fee. A farmer is legally obligated to pay the patent fee regardless of how that genetic insert entered his field. This could cause a farmer, who inadvertently acquired seeds, to pay the patent. He urged that farmers need to be protected from instances like these because there are no biological protections.

{Tape: 1; Side: B; Approx. Time Counter: 14.5 - 17.2}

John Venhuizen, Manhattan Farmer, thought that it was important to have a choice in what to grow and to how they want to grow it. He enjoined that the ability to take the products and grow them

in whatever way they want was important. He feels that liability should fall on those who deserve it. He strongly urged the Committee to vote yes on SB 218.

{Tape: 1; Side: B; Approx. Time Counter: 17.2 - 19.1}

Bill Wenzel, Farmer from Wisconsin and National Director for the Farmer to Farmer Campaign on Genetic Engineering, supports SB 218 because it places the risks and liabilities for contaminating the countryside with genetically engineered wheat on the industry which manufactures it. He discussed the way in which farmers lives are changed by the use of genetically modified products. He mentioned the technical use agreements and the results for farmers. There are many issues which arise from the technical use agreements and the patented technologies. He addressed a recent report from the Center for Food Safety which found that over 90 lawsuits have been filed involving 147 farmers and 39 farm related businesses. He cited a few examples to give an understanding of the problems which are involved; Rodney Nelson versus Monsanto and Tray Rousch versus Monsanto. He urged passage of SB 218.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 12.2}

Dan Teigen, Farmer/Rancher in Teigen and Ag Taskforce Chair for Northern Plains Resource Council, posed that SB 218 was a way to protect Montana's farmers from unfair liability related to genetically engineered wheat. He indicated that there is a problem when a farmer can not receive coverage from insurance agencies. He saw this bill as a way to protect the farmers of Montana.

{Tape: 2; Side: A; Approx. Time Counter: 12.2 - 14.8}

Jeanne Charter, representing Bull Mountain Land Alliance, saw this as a chance to defend small business against corporate takeover.

{Tape: 2; Side: A; Approx. Time Counter: 14.8 - 15.9}

Linda Gryczan, representing Grow Montana, stated that all SB 218 would do is protect the liability of Montana farmers incase of cross pollination. Urged support of SB 218.

{Tape: 2; Side: A; Approx. Time Counter: 15.9 - 17.3}

Jed Fitch, Montana Trial Lawyers Association, spoke in support of the bill. They believe in the basic conservative principal that people and corporations need to be held accountable and

responsible for their actions. He cited a contract used by Monsanto which showed that Monsanto was trying to escape its liability. He mentioned that all litigation for Monsanto would be held in St. Louis. He referenced Page 3, Line 17 of SB 218 which stated that the proper venue for litigation is the county where the injury is alleged to occur. Also he cited Page 4, Lines 3-6 which stated that Montana law would govern seed contracts purchased or planted in Montana. He claimed that Monsanto's contracts also violate the rights of landowners. He continued to discuss various aspects of the Monsanto contract which violated Montana law and the various aspects of SB 218 that would maintain the rights of Montana farmers. He closed by reminding the Committee of Article 13, Section 1 of the Montana Constitution.

{Tape: 2; Side: A; Approx. Time Counter: 17.3 - 22.7}

Jim Barngrover, representing Alternative Energy Resources Organization, provided a written testimony for the Committee. He focused on the legal definition of trespass. He discussed the owning of life forms by private companies. He quoted Wendell Berry as he discussed the aspect of food in our society.

EXHIBIT(jus28a04)

{Tape: 2; Side: A; Approx. Time Counter: 22.7 - 25.8}

Mary Fitzpatrick, Chair of Northern Plains Resource Council, dispersed handouts concerning Northern Plains position on SB 218.

EXHIBIT(jus28a05)

{Tape: 2; Side: B; Approx. Time Counter: 0 - 1.3}

Toni Chew, concerned citizen, offered a written copy of her testimony. She proffered a scenario which might arise for Montana's farmers if genetically modified wheat is allowed without any protection. She reiterated that seeds do not obey the boundaries placed by humans. She sees SB 218 equipping the farmers with tools to fight against the biotechnology companies.

EXHIBIT(jus28a06)

{Tape: 2; Side: B; Approx. Time Counter: 1.3 - 6.1}

Chris Christaens, Montana Farmers Union, stood in support of SB 218. They believe that a State policy must be taken on this issue. They strongly urged support of the bill.

{Tape: 2; Side: B; Approx. Time Counter: 6.1 - 6.9}

Bob Stevens, AERO and Northern Plains Member, addressed on part of the problem: consumers who do not want genetically modified organisms in their food products. He spoke of the European Union in western Europe where genetically modified organisms are not allowed. There is in fact a de facto moratorium on growing genetically modified crops. He urged support of SB 218.

{Tape: 2; Side: B; Approx. Time Counter: 6.9 - 10}

Opponents' Testimony:

Jon Stoner, Vice President of Montana Grain Growers Association, spoke in opposition to SB 218. He said that as an association they do everything they can to promote, expand and enhance Montana's wheat and barley industry. He claimed that although the bill appears to protect Montana's wheat industry they feel that it would actually have a detrimental affect. It would serve to isolate the state from new technology. Overwhelmingly farmers want research to continue but do not want release of genetically modified wheat until the market is ready to accept it. He claimed that because of the farmers attitudes, Round Up Ready Wheat has been shelved and Monsanto has closed its research. He felt that Montana could not afford to treat transingenic technology like a noxious weed. He remarked that preassigning liability encourages abuse and false claims. He called this bill a moratorium on the development of new technology for Montana. Passage of SB 218 would end all research of transingenic traits in Montana. He indicated that control of these genetically modified traits belongs at the federal level where these products receive their registration. Rather than close the door to new technology he felt that Montana should continue to work with the industry to move it forward.

{Tape: 2; Side: B; Approx. Time Counter: 10 - 15.3}

Dr. Dan Biggerstaff, Vice President of Research for Westbred, provided a written version of his testimony in opposition to SB 218. Westbred was primarily in opposition to SB 218 because it was unnecessary because there were no genetically modified wheat in the field yet, it addressed wheat only and when the time comes to release it into the market it would be approved by the three federal agencies which would test it very thoroughly. He realized that some people do not trust the government but felt that it would work to make the product legal and safe. His primary concern is that legislation of this kind would deny

Montana growers market leading varieties in the future. He also left nine slides covering the biotechnology aspect.

EXHIBIT(jus28a07)

EXHIBIT(jus28a08)

{Tape: 2; Side: B; Approx. Time Counter: 15.3 - 23}

{Tape: 3; Side: A; Approx. Time Counter: 0 - 1.3}

Michael Kakuk, Attorney for Western Environmental Trade

Association, had a two part testimony. He talked about the legal aspects of the bill. He noted that SB 218 did absolutely nothing to protect someone who accidentally uses genetically modified wheat from the patent holder. However, it would keep the neighbor from going against a farmer who unknowingly uses genetically modified wheat. He informed the Committee that environmental patent law could not be affected by this bill. He pointed out that on Page 2, Line 6 of the bill, patent holder was still in the bill even though they had supposedly changed it to manufacturer. He stated that the bill did basically one thing: as of now if someone is injured they can sue the people they feel are responsible. At this time they have to prove that they were injured and that they were liable. This bill says that if an individual is injured from their use or someone else's use of a genetically modified organism they only have to prove that they are injured, not liability. He cited some of the sections of the bill which contained liability he did not agree with.

{Tape: 3; Side: A; Approx. Time Counter: 1.3 - 9}

Arlene Rice, Hill County Wheat Producer and Member of the Montana Grain Growers and the Montana Ag-business Association, talked about products created by biotechnology companies. She claimed that at least 70% of all produce bought at the grocery store contain biotech products. She felt that Montana would be overlooked and behind if they refuse to allow genetically modified products. She insisted that biotechnology is not about large companies but small innovative companies that are doing amazing things. It offers the hope for profitability and value added products. She discussed the research done on wheat expressing that placing roadblocks in the way would cause great harm to the industry.

{Tape: 3; Side: A; Approx. Time Counter: 9 - 13.6}

Earl Bricker, Montana Farm Bureau, asserted that AFBF and Montana Farm Bureau policy does not support the bill. He asked, "What would happen if we passed this bill? Will it make Montana an island?" They feel it is a national issue.

{Tape: 3; Side: A; Approx. Time Counter: 13.6 - 14.3}

Dr. Mike King, DuPont Crop Protection and Sales and past President of Montana Ag-business association, focused on the contention that "genetically engineered wheat cannot be successfully segregated from wheat that is not genetically engineered." He claimed that this is a false contention. He agreed that non-genetically modified crops cannot be kept clean from genetically modified crops, but it could be kept clean within reasonable tolerance. He posed a hypothetical possibility of cross pollination and discussed pollen drift. He also submitted written testimony to the Committee.

[EXHIBIT\(jus28a09\)](#)

[EXHIBIT\(jus28a10\)](#)

{Tape: 3; Side: A; Approx. Time Counter: 14.4 - 18.5}

Mark Peterson, Farmer and Business Owner, was concerned with the limitations that put control on his choices of how to farm. He thinks that the bill would be a stepping stone to other crops. He saw the bill as restricting potential economic development of Montana wheat products.

{Tape: 3; Side: A; Approx. Time Counter: 18.5 - 19.7}

Mike Devries, Barber Seed Service, talked about the seed industry in Montana. He felt that this bill would force small seed companies to avoid bringing business to Montana, leaving it open to big companies like Monsanto. This bill would stop any opportunity to the seed industry in Montana. He urged the Committee to oppose SB 218.

{Tape: 3; Side: A; Approx. Time Counter: 19.7 - 21.9}

Nancy Schlepp, Montana Farm Bureau Federation, thought that addressing genetically modified organisms at the State level was the wrong way to handle the issue. Their policy reads that they support research for genetically modified organisms and that they do not want them introduced until the market is ready. She expressed that the real issue was a marketing issue. She opposed this bill because she supports family farms and wants them to have opportunities.

{Tape: 3; Side: A; Approx. Time Counter: 21.9 - 24.8}

Brian Lammers, Owner of a Farm, Ag Retailer and Member of Montana Ag Business Association, expressed his desire for family farms to succeed. He felt that this bill would limit the direction family

farms could take in the future. He proudly claimed Montana wheat is quality not quantity.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 2.4}

Bill Richter, Montana Farm Bureau, gave a brief background on his life. He mentioned that wheat varieties have low infection rates. It has been his experience that contaminated seed has been contained for six years. This and the cleaners are the ways to keep seed stock clean and weed free. He strongly encouraged the option to be left open on genetically modified organisms if they provide a service, cost reduction or increased profit. He would like to see genetically modified products available to farmers in Montana. He explained that his youngest daughter is a biotechnologist for Cargill. He opined that it is too hard to get business to Montana and it is not economically helpful to turn away viable businesses. He noted that Pasta Montana is looking at 25 different varieties of wheat in order to find one that will meet their desires. He indicated that biotechnology was accepted in the health field. He questioned why it was not accepted in the agriculture field.

{Tape: 3; Side: B; Approx. Time Counter: 2.4 - 18}

Pam Langley, Executive Director of the Montana Agriculture Business Association, handed out a brochure on ag-biotechnology. she reminded the Committee that no other state has passed a bill like this even though there have been similar pieces of legislation. She reiterated that no one wants these products in the field until the markets are ready. She also provided a petition with 150 signatures from Montana.

[EXHIBIT\(jus28a11\)](#)

[EXHIBIT\(jus28a12\)](#)

{Tape: 3; Side: B; Approx. Time Counter: 18 - 21.8}

Informational Testimony:

Alicia Pichette, State Auditors Office, informed the Committee that she was prepared to answer any questions pertaining to insurance.

{Tape: 3; Side: B; Approx. Time Counter: 21.8 - 22.6}

Questions from Committee Members and Responses:

SEN. JIM SHOCKLEY, SD 45, VICTOR wanted to know if any other company besides Monsanto makes this type of genetically modified wheat.

Mr. Kakuk could not answer the question.

SEN. SHOCKLEY followed up by asking if the facts represented about the contracts were accurate.

Mr. Kakuk replied that he has seen contracts with the exact provisions as spoken to by Mr. Fitch.

SEN. SHOCKLEY inquired if the word adhesion came to mind.

Mr. Kakuk responded that it could at times but it was an issue between the parties and the contract. He claimed that if there was a problem with the contract then there was a process under State law to contest it.

{Tape: 4; Side: A; Approx. Time Counter: 0 - 0.8}

SEN. JON ELLINGSON, SD 49, MISSOULA commented that he was unsure of what bill the opponents were discussing because he did not read the bill as preventing the introduction of genetically engineered wheat into Montana. He noted that in Section 3, Subsection 1 the bill provided that a manufacturer is liable for injuries suffered by any party because of the release of genetically engineered wheat into Montana. He asked Ms. Langley if she felt that this was a bad provision.

Ms. Langley thought that it was a provision that if enacted into law would lead to the non-introduction of genetically engineered wheat into Montana.

SEN. ELLINGSON followed up asking Ms. Langley, if she did not want to hold the manufacturer liable for the introduction of the new variety of wheat, who did she feel should be held liable.

Ms. Langley responded that the manufacturer did not have direct control over the product once it has been sold. She felt that whoever was handling the material should be responsible.

SEN. ELLINGSON interpreted Ms. Langley's comment to mean that she would want the Montana farmers and ranchers who use the product and the people who clean grain to be held responsible for any

damages from the release of genetically engineered wheat into Montana and she would not want the manufacturer held responsible.

Ms. Langley thought that he needed to look at the scenario of when this genetically engineered wheat would be introduced. From her understanding it would not be introduced until there was a market for it. She indicated that there needed to be a system of tolerances so that said damages would be erroneous. She thought that the answer would be buffer strips and segregation.

{Tape: 4; Side: A; Approx. Time Counter: 0.8 - 3.8}

SEN. ELLINGSON followed up noting that the reason they were dealing with the issue now was to put in place laws so that everyone would know where the liability would fall when or if it was introduced. He posed a hypothetical situation where the wheat is introduced and a farmer who has not used it has his crop contaminated by genetically engineered wheat. He again asserted that Ms. Langley would not want the manufacturer held liable.

Ms. Langley reiterated that she did not think that they could be held liable.

SEN. ELLINGSON continued assuming that she would want the neighboring farmer whose wheat accidentally drifted into another's field held responsible for the injuries suffered.

Ms. Langley responded that having grownup on a farm and having worked with pesticides the solution for this would be a buffer strip situation.

SEN. ELLINGSON supposed that the buffer strip did not work. He asked who was responsible for putting up the buffer strip in the first place.

Ms. Langley explained that the individual who was producing the specialty crop would be responsible for providing the buffer strip.

{Tape: 4; Side: A; Approx. Time Counter: 3.8 - 6.6}

SEN. ELLINGSON assumed that Ms. Langley would want the farmer who was using the genetically engineered wheat held responsible if the buffer strip did not work. He clarified that he was trying to understand who she thought should be held responsible since she did not like this bill because it placed the liability on the manufacturer. What he heard her saying was that responsibility rested on the neighboring farmer or the grain cleaner.

Ms. Langley answered that there would not be injury because these crops would not be introduced until the market is ready and tolerances have been set.

SEN. ELLINGSON asked Ms. Langley that as soon as the market was ready she was confident that there would not be any injuries.

Ms. Langley affirmed this assumption.

SEN. ELLINGSON cited Subsection 2, Section 3 which stated liability for the manufacturer could not be waived or avoided by contract or other means. He referred to the existence of contracts which limited the liability of the manufacturer simply to the cost of the grain. He did not understand why this would not be a good thing for Montana agriculture.

Ms. Langley claimed to have little understanding of contract law and thus did not know if that section of the bill was a good thing or not.

SEN. ELLINGSON finished by referencing Subsection 3 of Section 3 which would prohibit liability from falling on a farmer who was not a purchaser of genetically engineered wheat, who did not knowingly come into possession of it yet somehow got some in his crop and it spread from there. The provision of the bill would say that the farmer, who did not purchase it, would not be held liable. He asked again if Ms. Langley opposed this section of the bill.

Ms. Langley deferred questions on liability to Mr. Kakuk. She did not respond to his question.

{Tape: 4; Side: A; Approx. Time Counter: 6.6 - 10.1}

SEN. GARY PERRY, SD 35, MANHATTAN followed up with Ms. Langley. He assumed that the segregation she had mentioned would occur after harvest.

Ms. Langley indicated that mention of segregation had arisen in Dr. King's testimony. However she did agree that segregation would occur after harvest.

SEN. PERRY wanted to know if buffer strips would work for knapweed.

Ms. Langley did not know anything about the physiology or the properties of knapweed but suggested that research could be done. She thought that it might be eradicated by such actions.

{Tape: 4; Side: A; Approx. Time Counter: 10.1 - 12.4}

SEN. PERRY asked Mr. Kakuk what company within WHEATA he was representing.

Mr. Kakuk replied that he was not representing any specific company.

SEN. PERRY mentioned that Mr. Kakuk had claimed that this bill would not protect farmers from the patent holder. He wondered if the legislation mentioned in the handout from Northern Plains was the same legislation that they were discussing at that time.

Mr. Kakuk did not know why supporters of the bill felt that it limit the patent holders rights. It would limit the rights of the manufacturer as far as form, venue and liability. He claimed that the bill would do nothing if a patent holder sued a farmer for the use of their plant even if it had come into their field accidentally. However, if a neighbor charged a farmer for damages caused by a genetically modified plant that was unknowingly growing on their land the bill would cover the occurrence.

{Tape: 4; Side: A; Approx. Time Counter: 12.4 - 14.9}

SEN. PERRY quoted Mr. Stoner's testimony. He asked Mr. Stoner to define what customer meant in the context of his quote.

Mr. Stoner answered that customer referred to both domestic customers and foreign buyers of wheat.

SEN. PERRY refined the question. He wanted to know to whom Mr. Stoner sold to directly.

Mr. Stoner responded that they sold directly to the elevators who in turn sell to exporters.

{Tape: 4; Side: A; Approx. Time Counter: 14.9 - 16.4}

SEN. PERRY asked SEN. TESTER about the bill as it regards the protection of the farmer from the patent holder.

SEN. TESTER explained that the intent of the bill went to the manufacturer, who often times is also the patent holder. Whoever owns the seed should be liable, he does not think that this has anything to do with patent law. It came down to whoever owns the seed is liable.

SEN. PERRY mentioned that in **SEN. TESTER'S** opening he had stated that markets are eaten up by three or four companies. He asked that **SEN. TESTER** tell the Committee the names of these companies and what he had meant by that comment.

SEN. TESTER asserted that the meaning of the comment was that agriculture of the last 60 years has become concentrated with fewer people in the market place to provide inputs. He remarked that in the market place there are four companies: Cargill, Continental, IBP, and Tyson. These companies on a worldwide basis control around 80% of the food supply. He professed that what was in the bill was whether Montana would allow corporations to own the seeds, have contracts that take away property and financial rights or make the step to ensure that family farmers aren't suing each other. He posed the questions: "Could a farmer take 20% of their farm, turn it into a border strip and still make a living under these economic conditions?" and "If there is damage what are the options?"

{Tape: 4; Side: A; Approx. Time Counter: 16.4 - 21}

SEN. AUBYN CURTISS, SD 1, FORTINE deferred **SEN. ELLINGSON'S** question to Mr. Kakuk.

Mr. Kakuk clarified that it was the question concerning Subsection 3 of Section 3.

SEN. ELLINGSON remarked that this had not been his last question. His last question was concerning whether Ms. Langley thought that it was a good idea that a farmer who was not in breach of a contract for the purchase or use of the genetically engineered wheat would be held faultless under Subsection 3 of Section 3.

Mr. Kakuk felt that whoever was liable should be held liable through the full process of the law. He indicated that if an individual did not do something on purpose they should not be held liable and if the manufacturer did something they should be held liable.

{Tape: 4; Side: A; Approx. Time Counter: 21 - 22.9}

SEN. LYNDA MOSS, SD 26, BILLINGS inquired about the change in the membership of the Grain Growers Association.

Mr. Stoner replied that there was a decline in membership which was inevitable with the decline in farming. He mentioned that there were a number of issues which caused this decline; insurance, age and competition.

SEN. MOSS followed up by asking if the Grain Growers Association had a formal position on this legislation.

Mr. Stoner affirmed that they did.

SEN. MOSS questioned if this was from the membership of Montana's Grain Grower Association specifically.

Mr. Stoner answered that it had been ratified by Montana's members.

{Tape: 4; Side: A; Approx. Time Counter: 22.9 - 25.8}

SEN. BRENT CROMLEY, SD 25, BILLINGS asked Mr. Devries if he was a seed vendor. He mentioned that in Mr. Devries testimony he had indicated that he thought that liability would be placed on the seed vendors by this bill.

Mr. Devries responded that the vendors take ownership of the seed, clean it and make it available. He felt that the corn and soy bean industry was different because they are controlled by larger companies. His concern is that if genetically modified wheat is made available to seed companies who would provide certified seed to growers, the vendors would then become the manufacturers.

SEN. CROMLEY followed up by asking what Mr. Devries did with the seed.

Mr. Devries responded that they purchase seed from the grower, condition it, clean it, have it tested for purity and germination, and then made available for sale to a customer asking for the product.

SEN. CROMLEY asked if that process included genetically engineered wheat.

Mr. Devries replied that there is no genetically engineered wheat available at this time.

SEN. CROMLEY restated his question asking if Mr. Devries anticipated going through the same process with genetically engineered wheat.

Mr. Devries explained that if the genetically engineered wheat is brought to the market the way traditional varieties are, they would have title to the wheat and would sell it to a grower. He did not know what the commercialization agreement would look like for future genetically enhanced wheat.

{Tape: 4; Side: B; Approx. Time Counter: 0 - 2.7}

SEN. JERRY O'NEIL, SD 3, COLUMBIA FALLS purported that if a product that is received unsolicited in the mail becomes property wouldn't a farmer who gets a wheat seed in his field unsolicited why wouldn't they be the owner of that seed.

Mr. Fitch explained that there is a patent inside the seed which is a trademark technology that is owned by the patent holder. Therefore, the seed would belong to the farmer but the technology would belong to the patent holder.

SEN. O'NEIL followed up asking if the farmer would be able to plant the seed for his or her own production in the future.

Mr. Fitch replied that they could but they would still be reliable to the patent holder for patent infringement.

SEN. O'NEIL inquired that if the patent holder was an agency with the farmer who raised the wheat wouldn't they be giving it to the neighboring farmer gratuitously.

Mr. Fitch clarified SEN. ONEIL'S question. He remarked that the farmer who got the wheat seed on his field unknowingly under this statute would have a case against the manufacturer because they injected the seed into Montana's market knowing the ramifications.

SEN. O'NEIL clarified that he meant if the farmer received the seed gratuitously because it came into his field wouldn't he have the right to use that seed the same way as a person has the right to use something that comes in the mail which they didn't ask for.

Mr. Fitch answered that under current law, no a person would not have the same rights.

SEN. O'NEIL asked if this bill would change that law so they would.

Mr. Fitch responded that the bill would say the farmer would not be liable for damages caused by his seed unknowingly going into a neighbors crop or damage to the manufacturer for a farmer using the manufactured product without his awareness. He did not think that the bill addressed the issue of patent infringement.

{Tape: 4; Side: B; Approx. Time Counter: 2.7 - 6}

SEN. JIM SHOCKLEY, SD 45, VICTOR wondered if they could change 'manufacturer' to 'owner' of the wheat with **SEN. TESTER'S** consent.

SEN. TESTER thought that it would get to the problem as well. He indicated that Mr. Devries brought up a good point. However, genetically modified organisms are not like products which have been dealt with because the company maintains the ownership and only contract with the farmer to grow it and sell it back to them. At this point in time he felt that the change of language could work.

{Tape: 4; Side: B; Approx. Time Counter: 6 - 9}

Closing by Sponsor:

SEN. TESTER closed on the bill. He affirmed his decision to send this bill to Judiciary. He requested that the Committee members ask themselves what would happen if they did nothing with this bill. He discussed border strips and the testimony of Dr. King. He thought that this issue would have to be addressed outside of this bill. He quoted Mr. Richter's testimony. He concluded that all he wanted for the farmers of Montana is that they need not sue one another and still make their operations pay. He did not feel that this bill would limit the introduction of genetically modified wheat. He encouraged due pass on the bill.

{Tape: 4; Side: B; Approx. Time Counter: 9 - 13.6}

CHAIRMAN WHEAT closed the hearing on SB 218 and adjourned the Committee.

ADJOURNMENT

Adjournment: 11:00 A.M.

SEN. MIKE WHEAT, Chairman

for MARI PREWETT, Secretary

MW/mp

Additional Exhibits:

EXHIBIT ([jus28aad0.PDF](#))